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**(1998) 11 P&H CK 0023**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 3081 of 1980

Kashmiri Lal (Died) through L.Rs.

APPELLANT

Vs

Shri Sham Sunder

RESPONDENT

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**Date of Decision:** Nov. 26, 1998

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13

**Citation:** (1999) 121 PLR 804 : (1999) 1 RCR(Rent) 217

**Hon'ble Judges:** V.K. Bali, J

**Bench:** Single Bench

**Advocate:** P.N. Arora, for the Appellant; Aman Kumar Sharma and O.P. Sharma, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

V.K. Bali, J.

This revision has been filed against judgment of concurrence. Eviction petition filed by the respondent-landlord u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 was allowed by the Rent Controller on September 18, 1979. Aggrieved, petitioner-tenant filed an appeal but without any success. The same was dismissed by the Appellate Authority on October 13, 1980.

2. When the revision came up for hearing before this Court on January 5, 1981, the same was admitted without notice to the landlord. Petitioner-tenant had also obtained stay of his eviction.

3. In brief, facts of the case are that Sham Sunder, owner of Shop No. 75, situated in Mohalla No. 10, Jalandhar Cantt. and had rented out the same to Sobha Ram and Kashmiri Lal on August 1, 1973 at the rate of Rs. 100/- per month by an oral agreement but subsequently a rent note was also executed on January 24, 1974. The respondent - landlord sought eviction of the tenants on the ground that they were in arrears of rent since June 1, 1976 to the date of filing of the application as also

that they had materially impaired the value and utility of the building by demolishing and reconstructing a verandah in front of the shop without getting the written consent of the landlord as also without obtaining any sanction from the Cantonment Board. Installation of a hand pump in front of the shop was also pressed into service for eviction of the tenants. It was also contended that the tenants were using the premises in dispute for a purpose other than that for which it was let out.

4. The matter was contested and on the pleadings of the parties, following issues were framed:-

"1. Whether the application is not maintainable as mentioned in para No. 1 of the preliminary objection of the written statement? O.P.R.

2. Whether the application is bad for misjoinder and non-joinder of necessary party? O.P.R.

3. Whether Sobha Ram and Kashmiri Lal have vacated the premises in dispute and handed over the possession to the petitioner? O.P.R.

4. Whether the tenancy between the petitioner and Kashmiri Lal Tarsem Lal had been created as alleged in Para 3 of the preliminary objections, if so its effect? O.P.R.

5. Whether the application is mala fide and hence not maintainable? O.P.R.

6. Whether the plan of the premises in dispute is correct? O.P.A.

7. Whether the respondents are liable to be ejected on the grounds mentioned in Para No. 2 of the petitioner? O.P.A.

8. Whether a notice u/s 106 of the Transfer of Property Act was required and whether a valid notice was served on the respondents by the petitioner? O.P.A.

9. Relief.

5. Learned Rent Controller, decided Issues 1 and 2 against the tenants holding that the application for eviction was maintainable and the same was not bad for mis-joinder or non-joinder of the parties. Under Issues 3 and 4, it was held that Kashmiri Lal and Sobha Ram were tenants of the property in dispute and that no fresh tenancy was created in favour of Kashmiri Lal Tarsem Lal. Issue No. 8 was decided in favour of the landlord holding that the service of the notice was valid. Under Issue No. 7, it was held that the tender of rent on the first date of hearing was invalid as it was not made on behalf of Kashmiri Lal and Sobha Ram tenants but on behalf of Kashmiri Lal Tarsem Lal. Construction of the verandah after demolishing the old one was also held to be a material alternation which diminished the value and utility of the property. In view of the findings, as have been referred to above, petition for eviction was allowed.

6. In the appeal filed by the tenants, the Appellate Authority went into all aspects of the case and vide a detailed order, it dismissed the appeal. As mentioned above, it is against these orders of concurrence rendered by the learned Rent Controller and Appellate Authority that the present revision has been filed.

7. Learned counsel for the petitioners has failed to point out anything that may show that the impugned orders are illegal or improper. This Court, after going through the impugned orders, is also of the view that both the Rent Controller and the Appellate Authority, after properly appreciating the oral and documentary evidence came to a right conclusion, thus, allowing the application of the landlord for eviction u/s 13 of the Act. Finding no merit in this petition, I dismiss the same with costs quantified at Rs. 2,000/-.

8. Before I may part this order, I would like to mention that there are some proceedings with regard to payment of rent during the pendency of this revision petition and records of the case would further show that the tenants had paid rent upto December, 1993. If the petitioners have not paid rent after the date aforesaid, it will be open for the landlord not only to get possession in execution of the impugned orders but also to recover the arrears of rent for the period, the same have not been paid.